HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case

W.P. No. 3084 (S/S) Year 2001

Smt. Maheshwari Sanwal

Versus

State of U.P. & others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 16.03.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 3084(S/S) of 2001

Smt. Maheshwari Sanwal …. Petitioner

Vs.

State of U.P. and others …. Respondents

Shri M.C. Kandpal counsel for the petitioner
Shri. B.S. Verma Counsel for the respondents

Dated: 16th March 2004

Hon'ble Rajesh Tandon J.

Heard Shri M.C. Kandpal Learned counsel for the petitioner and Shri B.S. Verma Learned counsel for the respondent.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondent to appoint the petitioner on the basis of dying in Harness rules a Nagar Panchayat Bhimtal Nainital or near by places. The petitioner has further prayed for the issue a writ, order or direction in the nature of mandamus commanding and directing the respondent to pay the balance of payment from 23-4-86 to 13-7-94 to the petitioner with interest.

Brief facts giving rise to the present writ petition are that the petitioner's husband Ishwar Chand Sanwal S/o Shri Pitambar Sanwal

was appointed on 1-3-1972 on the post of Adhishashi Adhikari at Nagar Panchayat, Bazpur, Khatima Zahanabad, Di Di Hat, Kitcha, Narora and Richa, District Bareilly. The petitioner's husband expired on 17-11-98.

Counsel for the petitioner has submitted that while the petitioner's husband was posted as the Adhishashi Adhikari, a case under section 409 I.P.C. regarding the financial regularities at town area Bazpur was initiated and the petitioner was acquitted from the court of Chief Judicial Magistrate Kashipur District Nainital on 29 May 1991. The Secretary Bagar Vikash Anubagh 1 Uttar Pradesh Government reinstate the petitioner's husband as a secretary Nagar Kschetra Narora District Bulandshar and he were reinstated.

The petitioner has filed a representation for the payment of balance of salary of her husband from 23-4-86 to 13-7-94 to the Adhisashi Adhikari Nagar Panchayat, Di Di Hat and the Adhikari Nagar Panchayat Di Di Hat Pithoragarh has issued a letter dated 2-2-2001 stating that the petitioner's husband was working from 22-7-86 to 31-7-89 by ignoring the Secretaries letter.

The petitioner has preferred a representation dt. 12-3-2001 to Adhisashi Adhikari Nagar Panchayat Di Di Hat Pithoragarh for the payment of balance amount of the salary of her deceased husband but the amount has not been paid to the petitioner. The petitioner has also moved a representation on 18-3-2001 to the Director Local Bodies Uttar Pradesh and Director Local Bodies Uttaranchal for appointing the petitioner on any post on the basis of Dying-in- Harness Rule but neither balance of salary due to the petitioner's husband was paid to her nor she was appointed in that department under Dying-in-Harness Rule. The petitioner has further stated that she is suffering from financial hardship and the authorities may be directed to appoint her on the basis of Dying in Harness Rules.

At the time of the admission of the writ petition following order was passed on 30-5-2001.

"Notices have been accepted by learned Chief Standing Counsel on behalf of respondents no. 3 to 6, who prays for and is allowed three weeks time to file counter affidavit.

List after three weeks.

Issue notice to the respondents 1 and 2, returnable within aforesaid period.

In the meantime the opposite parties are directed to consider the case of the petitioner under dying in harness rules if applicable."

Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dyeing In Harness Rules, 1974 provides as under:-

5." [Recruitment of a member of the family of the deceased] [Subs. By Noti. 6/XII/73-Ka-2-99, dated 20th January, 1999, published in U.P. Gazette (Extra.) Part-4 section (Ka) dated 20th January 1999].

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall.on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person–

(i) fulfils the educational qualification prescribed for the post ,

(ii) is otherwise qualified for Government service, and

(ii) makes the application for employment within five
Years from the dated of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible , such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death.

(3) [Ins.by Noti. No. 6/12-73-Ka-2-2001, dated 12th October 2001 [vide U.P Recruitment of Dependants of Government Servants Dying in Harness(Sixth Amendment) Rules, 2001(w.e.f 12-10-2001] Each appointment under Sub-rule (1) should be under the condition that the person appointed under sub-rule(1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death.

It has been held by the Apex Court Smt. Sushma Gosain and others Vs. Union of India and others AIR 1989 SC 1976 that the appointment on compassionate appointment ground is made to enable the family to tide over the sudden crises. It read as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is not suitable

post for appointment supernumerary post should be created to accommodate the applicant."

Relying upon the judgment of Smt.Sushma Gosain and others Vs. Union of India and others AIR 1989 SC 1976 it has been held in Manish Mishra VS, State of U.P. 1998(3) ESC 1877(All) the court has directed to create supernumerary post. The observation are quoted below; -

" The core question is whether mandamus can be issued commanding the respondents to create supernumerary Class III post. The appointment on compassionate ground is made to enable the family to tide over the sudden crisis on the death of the deceased employee who was a bread earner in the family. If the post is not available a supernumerary post it to be created . In Smt.Sushma Gosain and others Vs. Union of India and others AIR 1989 SC 1976, wherein the widow of the deceased employee made application for appointment on the death of her husband in the year 1982 but she was not given appointment for many years , the court directed that if there is no suitable post for appointment, supernumerary post be created to accommodate the applicant with the following observation:-

<u>Paragraph –3</u> *"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is not suitable post for appointment supernumerary post should be created to accommodate the applicant."*

<u>Paragraph –4 “</u> In Smt. Phoolwati Vs Union of India and others, AIR 1991 SC 469, the direction was given by the Apex Court relying upon the decision of Smt. Sushma Gosain’s case(supra0 for employing the applicant in that case on a suitable post commensurate with her educational qualification. The test, when class III or Class IV post or such other supernumerary post has to be created, was considered in Umesh Kumar Nagpal VS. State of Haryana and others, Judgment Today 1944(3) SC 525, wherein it was held that if the object of granting compassionate employment is to enable the family to tide over the sudden crisis, as a rule, appointments in public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any consideration is permissible. There are certain exceptions and one such exception is in favour of dependent of an employee dying in harness and leaving his family in penury and without any means of life. The posts in Classes III and IV are the lowest posts in not manual and manual categories and hence they alone can be offered on compassionate grounds;-

“In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not

be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family. Of the financial destitution and to help it get over the emergency."

Paragraph –5 " The Government has decided to create supernumerary Class IV post. The direction given by the Government Order dated 16-8-96 is not in contravention of the principle laid down by the Apex Court referred to in Umesh Kumar Nagpal's case (Supra.)"

In the case of Smt. Pushp Lata Dixit Vs. Madhyamic Shiksha Parishad and others following observations having made. Reliance was placed on the judgment of the case of Smt. Sushma Gosain and other reported in 1991 (18) ALR 509: -

2. Hon'ble Supreme Court in a case Smt. Sushma Gosain and others, Vs. Union of India and others, held that;-

" It can be stated unequivocally that in all claims for appointment on compassionate ground, there should be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is not suitable post for appointment supernumerary post should be created to accommodate the applicant."

3.Keeping in mind that fact that the petitioner was appointed in 1973 and continuously worked in the department up to the date of his death in my opinion it would be proper to direct the opposite parties to

accommodate the petitioner in the Department. The petitioner is a widow of the deceased who died in harness, therefore, I quash the impugned order dated 20-9-1989 contained in Annexure No. 11 and direct the opposite parties to consider the question of appointment of the petitioner in accordance with her qualification and pass an order within one month from the date of receipt of this order and provide employment in accordance with her qualification."

In Jagdish Prasad Vs. State of Bihar and another 1996 1 SCC 301,it has been held as under: -

" The very object of appointment of a dependent of the deceased employees who died in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family."

In view of the aforesaid facts and circumstances, a writ of mandamus is issued directing the respondents to consider the appointment of the petitioner under Dying-in-Harness Rules.

Further a writ of mandamus is issued directing the respondents to pay the balance of the salary of the husband of the petitioner.

Respondents are directed to comply the aforesaid directions within a period of one month from the issue of the certified copy of the order.

Consequently, the writ petition is allowed. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated:- 16.3.2004

Mohit